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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment: 31st January, 2018*

+ W.P.(C) 6337/2016

RAFIQ AHMED

..... Petitioner

Through: Mr.Rajiv Kumar Ghawana, Advocate.

versus

GOVT. OF NCT OF DELHI & ORS

..... Respondents

Through: Mr.Yeeshu Jain, Standing Counsel for
L&B/LAC with Ms.Jyoti Tyagi,
Advocate.

Mr.Nawal Kishore Jha, Advocate for
respondent/DDA.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

1. With the consent of the parties, the writ petition is set down for final hearing and disposal.
2. This is a petition under Article 226 of the Constitution of India filed by the petitioner seeking a declaration that the acquisition proceedings pertaining to land of the petitioner comprised in Khasra No.409 admeasuring 130 square yards, situated in the revenue estate of Village Jasola, Delhi (hereinafter referred to as 'the subject land') stand lapsed in view of Section 24 (2) of the Right to Fair

Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as '2013 Act'), as neither the physical possession has been taken nor compensation has been paid to the petitioner.

3. Counsel for the petitioner submits at the outset that W.P.(C) 3714/2015 pertaining to the same Khasra number has been allowed and identical objections raised have not been accepted by the Court.
4. In this case, a Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') was issued on 23.06.1989, a declaration under Section 6 of the Act was issued on 22.06.1990 and an Award bearing No.21/1992-93 was passed on 18.06.1992. Counsel for the petitioner submits that the case of the petitioner is fully covered by a decision rendered by the Apex Court in the case of ***Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors.***, reported at (2014) 3 SCC 183, as neither possession has been taken nor compensation has been paid to the petitioner.
5. In the counter affidavit filed by the LAC, it is averred that the possession has been taken and in the absence of Statement 'A', it cannot be ascertained whether the compensation has been tendered to the petitioners or not. In the case of ***Shiv Lal & Ors vs. Government of NCT OF Delhi & Ors.***, writ petition pertaining to the same Khasra number almost identical objections were raised. In paras 3 and 4 of said judgment, the court has observed as under:

“3. Though the respondents claimed that possession of the said land was taken on 16.07.2007, the petitioners dispute this and maintain that physical possession has not been taken. However, insofar as the issue of compensation is concerned,

the petitioners' case is that compensation has neither been offered nor paid to the petitioners. The stand of the respondents, however, is that the Statement 'A' is not traceable and therefore the respondents are not in a position to specifically state as to whether the compensation has been paid or not. In these circumstances the averments made by the petitioners would have to be accepted and that means that compensation has not been paid"

4. Without going into the controversy of physical possession, this much is clear that the Award was made more than five years prior to the commencement of the 2013 Act and the compensation has also not been paid. The necessary ingredients for the application of Section 24(2) of the 2013 Act as interpreted by the Supreme Court and this Court in the following cases stand satisfied:-

(1) Pune Municipal Corporation and Anr v. Harakchand Misirimal Solanki and Ors: (2014) 3 SCC 183;

(2) Union of India and Ors v. Shiv Raj and Ors: (2014) 6 SCC 564;

(3) Sree Balaji Nagar Residential Association v. State of Tamil Nadu and Ors: Civil Appeal No. 8700/2013 decided on 10.09.2014;

(4) Surender Singh v. Union of India & Others: WP(C) 2294/2014 decided on 12.09.2014 by this Court; and

(5) Girish Chhabra v. Lt. Governor of Delhi and Ors: WP(C) 2759/2014 decided on 12.09.2014 by this Court".

6. We have heard the counsel for the parties.

7. In our view, the case of the petitioner is fully covered by the decision rendered by the Apex Court in the case of ***Pune Municipal Corporation & Anr.(supra)***. Paras 14 to 20 of aforesaid decision read as under:

“14. Section 31(1) of the 1894 Act enjoins upon the Collector, on making an award under Section 11, to tender payment of compensation to persons interested entitled thereto according to award. It further mandates the Collector to make payment of compensation to them unless prevented by one of the contingencies contemplated in sub-section (2). The contingencies contemplated in Section 31(2) are: (i) the persons interested entitled to compensation do not consent

to receive it (ii) there is no person competent to alienate the land and (iii) there is dispute as to the title to receive compensation or as to the apportionment of it. If due to any of the contingencies contemplated in Section 31(2), the Collector is prevented from making payment of compensation to the persons interested who are entitled to compensation, then the Collector is required to deposit the compensation in the court to which reference under Section 18 may be made.

15. Simply put, Section 31 of the 1894 Act makes provision for payment of compensation or deposit of the same in the court. This provision requires that the Collector should tender payment of compensation as awarded by him to the persons interested who are entitled to compensation. If due to happening of any contingency as contemplated in Section 31(2), the compensation has not been paid, the Collector should deposit the amount of compensation in the court to which reference can be made under Section 18.

16. The mandatory nature of the provision in Section 31(2) with regard to deposit of the compensation in the court is further fortified by the provisions contained in Sections 32, 33 and 34. As a matter of fact, Section 33 gives power to the court, on an application by a person interested or claiming an interest in such money, to pass an order to invest the amount so deposited in such government or other approved securities and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as it may consider proper so that the parties interested therein may have the benefit therefrom as they might have had from the land in respect whereof such money shall have been deposited or as near thereto as may be.

17. While enacting Section 24(2), Parliament definitely had in its view Section 31 of the 1894 Act. From that one thing is clear that it did not intend to equate the word “paid” to “offered” or “tendered”. But at the same time, we do not think that by use of the word “paid”, Parliament intended

receipt of compensation by the landowners/persons interested. In our view, it is not appropriate to give a literal construction to the expression “paid” used in this sub-section (sub-section (2) of Section 24). If a literal construction were to be given, then it would amount to ignoring procedure, mode and manner of deposit provided in Section 31(2) of the 1894 Act in the event of happening of any of the contingencies contemplated therein which may prevent the Collector from making actual payment of compensation. We are of the view, therefore, that for the purposes of Section 24(2), the compensation shall be regarded as “paid” if the compensation has been offered to the person interested and such compensation has been deposited in the court where reference under Section 18 can be made on happening of any of the contingencies contemplated under Section 31(2) of the 1894 Act. In other words, the compensation may be said to have been “paid” within the meaning of Section 24(2) when the Collector (or for that matter Land Acquisition Officer) has discharged his obligation and deposited the amount of compensation in court and made that amount available to the interested person to be dealt with as provided in Sections 32 and 33.

18. 1894 Act being an expropriatory legislation has to be strictly followed. The procedure, mode and manner for payment of compensation are prescribed in Part V (Sections 31-34) of the 1894 Act. The Collector, with regard to the payment of compensation, can only act in the manner so provided. It is settled proposition of law (classic statement of Lord Roche in *Nazir Ahmad*[1]) that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.

19. Now, this is admitted position that award was made on 31.01.2008. Notices were issued to the landowners to receive the compensation and since they did not receive the compensation, the amount (Rs.27 crores) was deposited in the government treasury. Can it be said that deposit of the amount of compensation in the government treasury is equivalent to the amount of compensation paid to the

landowners/persons interested? We do not think so. In a comparatively recent decision, this Court in Agnelo Santimano Fernandes[2], relying upon the earlier decision in Prem Nath Kapur[3], has held that the deposit of the amount of the compensation in the state's revenue account is of no avail and the liability of the state to pay interest subsists till the amount has not been deposited in court.

20. From the above, it is clear that the award pertaining to the subject land has been made by the Special Land Acquisition Officer more than five years prior to the commencement of the 2013 Act. It is also admitted position that compensation so awarded has neither been paid to the landowners/persons interested nor deposited in the court. The deposit of compensation amount in the government treasury is of no avail and cannot be held to be equivalent to compensation paid to the landowners/persons interested. We have, therefore, no hesitation in holding that the subject land acquisition proceedings shall be deemed to have lapsed under Section 24(2) of the 2013 Act.”

8. We see no reason to take different view than the view expressed in the case of *Shiv Lal & Ors (supra)*.
9. Resultantly, the writ petition is allowed.
10. It is declared that the acquisition proceedings pertaining to land of the petitioner is deemed to have lapsed. We accept the undertaking given by the petitioner that they have not received the compensation and they shall remain bound by the same. Should it be proved otherwise, it could amount to making a false statement to the Court.
11. Since, the award having been announced more than five years prior to the commencement of the 2013 Act, the petitioner is entitled to declaration that the acquisition proceedings in respect of the subject land are deemed to have lapsed. It is ordered accordingly.

12. The writ petition stands disposed of.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J

JANUARY 31, 2018

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